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Attorney for Plaintiff
MEGAN KELLY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MEGAN KELLY,

Plaintiff,

vs.

APPLERA CORPORATION and DOES 1-20,
inclusive,

Defendants.

Case No.: C-07-3002 MMC

**DECLARATION OF MAUREEN E.
MCFADDEN IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: July 28, 2008

Time: 9:00 a.m.

Courtroom 7, 19th Floor

The Honorable Maxine M. Chesney

I, Maureen E. McFadden, declare:

1. I have personal knowledge of the facts contained within this declaration and verify that the matters alleged herein are true and correct. If called as a witness in this case, I could and would testify competently to the facts contained herein.

2. I am an attorney licensed to practice law in the State of California, and in the Ninth Circuit Court of Appeal, and the Eastern, Northern and Central District Courts in California. I am the owner of Law Offices of Maureen E. McFadden.

3. I am counsel for plaintiff Megan Kelly in this matter.

1 4. Attached hereto as Exhibit A are true and correct copies of excerpts from plaintiff
2 Megan Kelly's February 11, 2008 deposition.

3 5. Attached hereto as Exhibit B are true and correct copies of excerpts from plaintiff
4 Megan Kelly's February 11, 2008 deposition.

5 6. Attached hereto as Exhibit C are true and correct copies of excerpts from Dr.
6 Raad Al-Sheikh's deposition.

7 7. Attached hereto as Exhibit D are true and correct copies of excerpts from Stefan
8 Lazar's deposition.

9 8. Attached hereto as Exhibit E are true and correct copies of excerpts from
10 Jonathon Laosiri's deposition.

11 9. Attached hereto as Exhibit F are true and correct copies of excerpts from Stefan
12 Lazar's deposition, including Exhibit 2 to that deposition.

13 10. Attached hereto as Exhibit G are true and correct copies of excerpts from Stefan
14 Lazar's deposition.

15 11. Attached hereto as Exhibit H are true and correct copies of excerpts from
16 Jonathon Laosori's deposition.

17 12. Attached hereto as Exhibit I are true and correct copies of excerpts from Jonathon
18 Laosori's deposition.

19 13. Attached hereto as Exhibit J are true and correct copies of excerpts from Jonathon
20 Laosori's deposition.

21 14. Attached hereto as Exhibit K are true and correct copies of excerpts from
22 Jonathon Laosori's deposition, including Exhibit 4 to that deposition.

1 15. Attached hereto as Exhibit L are true and correct copies of excerpts from
2 Jonathon Laosori's deposition, including Exhibit 6 to that deposition.

3 16. Attached hereto as Exhibit M are true and correct copies of excerpts Stefan
4 Lazar's deposition.

5 17. Attached hereto as Exhibit N are true and correct copies of excerpts from Stefan
6 Lazar's deposition.

7 18. Attached hereto as Exhibit O are true and correct copies of excerpts from Stefan
8 Lazar's deposition.

9 19. Attached hereto as Exhibit P are true and correct copies of excerpts from Stefan
10 Lazar's deposition.

11
12 I declare under penalty of perjury under the laws of the State of California and the United
13 States that the foregoing is true and correct, and that this declaration was executed on this 20th
14 day of June, 2008, at Berkeley, California.

15
16
17 By: 

18 Maureen E. McFadden
19
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EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MEGAN KELLY,

Plaintiff,

vs.

No. C-07-3002 MMC (EMC)

APPLERA CORPORATION,

Defendant.

CERTIFIED
COPY

DEPOSITION OF MEGAN LYNN KELLY

San Francisco, California

Monday, February 11, 2008

Reported by:

DARCY J. BROKAW

RPR, CRR, CLR, CSR No. 12584

Job No. 82191

MEGAN LYNN KELLY

02/11/08

1 BY MR. PAETKAU:

2 Q Overall. And I'm actually referring to
3 medical leaves of absence right now, not vacation or
4 anything else right now.

5 A Okay. I took leave when I injured my
6 ankle in July 2004. I returned to work briefly, was
7 reinjured and continued leave after that.

8 And I took two weeks, about two weeks'
9 leave, for my third surgery in December of 2007.

10 Q When did you return back to work after the
11 first leave in July of 2004?

12 A In September of 2004, I believe.

13 Q And how long were you back at work before
14 you went out on leave again?

15 A About a week.

16 Q When you returned to work in September of
17 '04, did you have the same duties?

18 A Yes.

19 Q Did you work the same hours?

20 A I'm sorry, back to the previous question,
21 did I have the same duties. Do you mean as before I
22 went out?

23 Q Right. Before you left in July and then
24 you came back in September for a week, during that
25 week, did you have the same duties?

EXHIBIT B

MEGAN LYNN KELLY

02/11/08

1 BY MR. PAETKAU:

2 Q Overall. And I'm actually referring to
3 medical leaves of absence right now, not vacation or
4 anything else right now.

5 A Okay. I took leave when I injured my
6 ankle in July 2004. I returned to work briefly, was
7 reinjured and continued leave after that.

8 And I took two weeks, about two weeks'
9 leave, for my third surgery in December of 2007.

10 Q When did you return back to work after the
11 first leave in July of 2004?

12 A In September of 2004, I believe.

13 Q And how long were you back at work before
14 you went out on leave again?

15 A About a week.

16 Q When you returned to work in September of
17 '04, did you have the same duties?

18 A Yes.

19 Q Did you work the same hours?

20 A I'm sorry, back to the previous question,
21 did I have the same duties. Do you mean as before I
22 went out?

23 Q Right. Before you left in July and then
24 you came back in September for a week, during that
25 week, did you have the same duties?

MEGAN LYNN KELLY

02/11/08

1 A As before I left in July, yes.

2 Q Okay. And did you have the same hours,
3 the same shift?

4 A Yes.

5 Q And what happened during that week? Was
6 there something that happened that you reinjured
7 your right ankle?

8 A I was returned to work with restrictions
9 to be able to sit down whenever I needed to. I was
10 the only one working on the product line that I was
11 working on, and I was told early on in that week
12 that we weren't meeting turnaround time and that we
13 needed to meet turnaround time; and I was reinjured
14 because I was trying to take oligos from Savant and
15 get them ready for the next step of processing
16 before I went to lunch so they would meet turnaround
17 time, even though I needed to sit down.

18 Q So what were you doing when you reinjured
19 your ankle?

20 A I had my hands full of oligos that I had
21 just taken out of the Savant. I stepped away from
22 the Savant, and my ankle separated; and when I put
23 it back down on the floor, it hurt.

24 Q And when you say you had a handful of
25 oligos, I'm just trying to picture it. Is that test

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MEGAN KELLY,

Plaintiff,

vs.

No. C-07-3022 MMC

APPLERA CORPORATION,

Defendant.

CERTIFIED COPY

DEPOSITION OF RAAD AL-SHAIKH, M.D.

April 11, 2008

Reported by:

Natalie Y. Botelho

CSR No. 9897

RAAD AL-SHAikh, M.D. April 11, 2008

1 what was your assessment of her ability to walk without
2 assistance?

3 MS. McFADDEN: I'm going to object. I mean,
4 you're going to have to clarify when you're talking
5 about.

6 MS. AGARWAL: Q. During your treatment of
7 her.

8 MS. McFADDEN: During any of the six sessions
9 or the five to ten visits --

10 MS. AGARWAL: Right.

11 MS. McFADDEN: -- over almost two years?

12 MS. AGARWAL: Right.

13 THE WITNESS: Can you repeat the question?

14 MS. AGARWAL: Q. Sure. So during the span of
15 time that you treated Ms. Kelly, what was your
16 assessment of her ability to walk without any form of
17 assistance, without a cane or anything like that?

18 A. I think -- well, for a large portion of the
19 time when she was under my care, she had difficulty
20 without some sort of assistive device.

21 Q. Okay. How did you examine or treat Ms. Kelly
22 when she came to your office the first time?

23 A. I did a history, I did a physical examination,
24 we obtained X-rays.

25 Q. Okay. Did you -- at any point during your

EXHIBIT D

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 ---000---

5 MEGAN KELLY,
6 Plaintiff,

COPY

7 vs.

No. C-07-3002 MMC

8 APPLERA CORPORATION and
9 DOES 1-20, inclusive,

10 Defendants.
11 _____/

12
13 DEPOSITION OF GEORGE STEFAN LAZAR

14 VOLUME I

15 (Pages 1 to 249)

16
17
18 Taken before ERIN F. FERREYRA

19 CSR No. 12199

20 February 13, 2008



One Kaiser Plaza, Suite 505
Oakland, California 94612
510/451-1580 Fax 510/451-3797

Certified Shorthand Reporters

1 A. No, not that I know of. 05:51:38

2 Q. Is it communicated to employees? 05:51:39

3 A. If the -- it can be. 05:51:42

4 Q. Well, when you say it can be, is every 05:51:53
5 employee who goes out on leave notified that their 05:51:55
6 doctor's information about where they are in terms 05:52:02
7 of their health and their ability to get back to 05:52:06
8 work, that should go back to the disability 05:52:09
9 insurer and not the employer? 05:52:11

10 A. Yes. 05:52:13

11 Q. Everybody is notified that goes out on 05:52:13
12 leave? 05:52:18

13 A. Yes. 05:52:18

14 Q. And how are employees notified of that? 05:52:19

15 A. They are told in the letter that 05:52:22
16 communication regarding their medical condition is 05:52:40
17 to be communicated with UnumProvident. 05:52:44

18 Q. And between the period of September 2004 05:53:03
19 when Ms. Kelly was reinjured and went out on leave 05:53:06
20 again and the end of 2005, did you receive any 05:53:09
21 updates from Unum as to her status? 05:53:12

22 A. Yes. 05:53:15

23 Q. What did you learn as a result of those 05:53:17
24 updates? 05:53:19

25 A. We learned that -- we learned how far 05:53:19

1 the -- what's the period of her certification as 05:53:22
2 being off work and eligible for the salary 05:53:29
3 continuation program. 05:53:32

4 Q. In January of 2006, did you find out that 05:53:42
5 Ms. Kelly had a new set of work restrictions and 05:53:44
6 that she was seeking accommodations that allowed 05:53:50
7 her to return to work? 05:53:52

8 MR. PAETKAU: Objection to the question as 05:53:57
9 phrased. Lacks foundation. Assumes facts not in 05:53:58
10 evidence. Argumentative. 05:54:01

11 BY MS. McFADDEN: 05:54:01

12 Q. Do you understand the question? 05:54:04

13 A. Could you read back the question, please. 05:54:04

14 (Record read.) 05:54:06

15 BY MS. McFADDEN: 05:54:06

16 Q. I think there's a couple of things off in 05:54:26
17 that question. Let me reask it. 05:54:28

18 In January of 2006, did you receive any 05:54:30
19 information that Ms. Kelly's status had changed in 05:54:34
20 that she had work restrictions and was seeking 05:54:40
21 accommodation that would allow her to return to 05:54:42
22 work? 05:54:44

23 MR. PAETKAU: Objection. Asked and 05:54:44
24 answered. 05:54:48

25 THE WITNESS: Yes. 05:54:48

EXHIBIT E

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 ---000---

5 MEGAN KELLY,
6 Plaintiff,

COPY

7 vs.

No. C-07-3002 MML

8 APPLERA CORPORATION,

(EMC)

9 Defendants.
10 _____/

11
12
13
14 DEPOSITION OF JONATHAN LAOSIRI

15
16
17
18
19 Taken before CAROL SCHILP

20 CSR No. 9648

21 April 8, 2008
22
23



One Kaiser Plaza, Suite 505
Oakland, California 94612
510/451-1580 Fax 510/451-3797

Certified Shorthand Reporters

1 Q. Okay. All right. Well, let's look at
2 this again.

3 And do you believe this to be accurate?
4 Is that the email you sent?

5 A. Yeah.

12:08

6 Q. Okay. So the email says that you spoke to
7 her this morning. Per the doctor's request, she
8 was released to work only 12 hours a week.

9 So now that you've read this email, does
10 that refresh your recollection that, in your call
11 with Ms. Kelly, she told you she could return 12
12 hours a week?

12:08

13 A. I don't remember, but must be.

14 Q. Okay. And as you're looking at this
15 email, does that refresh your recollection about
16 anything else Ms. Kelly told you during that
17 telephone call?

12:08

18 A. No.

19 Q. Okay. And looking at the email, it says
20 "I received a call from Megan Kelly today."

12:08

21 So looking at the email date of 1/24/06,
22 does that refresh your recollection that the call
23 with Ms. Kelly was on January 24th?

24 A. Yeah.

25 Q. Okay. And that's the only call you've had

12:08

1 with Ms. Kelly?

2 A. Yes.

3 Q. Okay. All right. So let's look at the
4 last line of this email. It says "She spoke with
5 someone in HR Direct, and I'm waiting to hear from
6 them."

12:09

7 Okay. And the "she" is referring to
8 Ms. Kelly, right, in that last sentence?

9 A. Yes.

10 Q. Okay. So during the telephone
11 conversation with Ms. Kelly, did she tell you about
12 having spoken to somebody in HR Direct?

12:09

13 A. She must have; otherwise, I wouldn't have
14 write it down.

15 Q. And as we sit here today, any
16 recollection, now that you're looking at this
17 email, about what she told you in terms of talking
18 to somebody in HR Direct?

12:09

19 A. I don't remember.

20 Q. Okay.

12:09

21 MR. PAETKAU: I think she's asking if this
22 refreshes your memory.

23 THE WITNESS: No.

24 BY MS. McFADDEN:

25 Q. Okay. Well, you wouldn't have put it down

12:09

1 to work in or about January 2006?

2 A. I don't remember.

3 Q. So as we sit here today, you don't recall
4 having any conversation with Mr. Lazar with regard
5 to Ms. Kelly's request to return to work?

12:13

6 A. I don't remember.

7 Q. Okay. Do you remember having any
8 conversations with anybody from HR with respect to
9 Ms. Kelly's request to return to work in or about
10 January 2006?

12:14

11 A. I don't remember.

12 Q. So as we sit here today, you have no
13 recollection at all of whether or not you had any
14 conversations with anybody from HR about
15 Ms. Kelly's request to return to work?

12:14

16 A. I don't remember. It was two years ago.

17 MS. McFADDEN: I'm going to mark next in
18 order -- this will be Exhibit 5.

19 So the court reporter will mark this, and
20 she'll give you a copy to look at.

12:15

21 (Plaintiff's Exhibit No. 5 marked for
22 identification.)

23 MS. McFADDEN: So for the record, we're
24 marking as Exhibit 5 a one-page document. It's got
25 a handwritten notation at the bottom, Bates stamped

12:15

1 Kelly 0294. It looks like it's a doctor's note.
2 It's dated 1/20/06, and it's on the letterhead of
3 Fremont Orthopedic, O-r-t-h-o-p-e-d-i-c, Medical
4 Group.

5 BY MS. McFADDEN:

6 Q. All right. Why don't you take a look at
7 this briefly, Mr. Laosiri.

8 Let me just ask you another question
9 before we talk about this.

10 Did you review Mr. Lazar's deposition
11 transcript?

12:17

12 A. No.

13 Q. All right. Have you seen this document we
14 marked as Exhibit 5 before?

15 A. No.

12:17

16 Q. Okay. Well, as we're looking at it here,
17 it appears to be a doctor's note for Ms. Kelly
18 dated 1/20/06. Let's look where it says
19 "Restrictions remarks." I'm just going to read
20 that out loud, if you'd follow along with me.

12:17

21 It says "Return to work three days a week,
22 working four hours day. Should be able to sit down
23 every hour for ten minutes. No lifting over 20
24 pounds." Okay.

25 MR. PAETKAU: Is there a question? If

12:17

1 there is --

2 MS. McFADDEN: Yeah.

3 MR. PAETKAU: -- I just want to object to
4 the characterization of this as a -- appears to be
5 a doctor's note. It's lacking in foundation;
6 speculation.

12:17

7 But you go ahead with your question.. I
8 didn't know you were going to read the document.

9 BY MS. McFADDEN:

10 Q. Okay. Now, you said that you don't
11 remember seeing this document before.

12:17

12 But specifically those restrictions, are
13 those what you understood Ms. Kelly's work
14 restrictions to be in January 2006?

15 MR. PAETKAU: Objection. Asked and
16 answered.

12:18

17 THE WITNESS: I think so.

18 BY MS. McFADDEN:

19 Q. Okay. And when did you first find out
20 that those were what Ms. Kelly's work restrictions
21 were?

12:18

22 A. Can you rephrase that?

23 Q. When did you first learn that those were
24 Ms. Kelly's work restrictions?

25 A. When I spoke to her --

12:18

1 Q. Okay.

2 A. -- on the phone.

3 Q. All right.

4 MR. PAETKAU: Maureen?

5 MS. McFADDEN: Yeah.

12:19

6 MR. PAETKAU: Is now a convenient time for
7 a lunch break, or do you want to keep going?

8 MS. McFADDEN: Yeah, it's probably as good
9 a time as any. Let's go off the record.

10 (Recess was taken from 12:19 to 1:02.)

12:19

11 BY MS. McFADDEN:

12 Q. All right. I think we're going to mark --
13 well, let me just ask you first, so what's the
14 next -- you sent an email to Merte Miles, and we
15 marked that as an exhibit to the record.

13:02

16 When did you hear back from Ms. Miles?

17 A. I don't remember.

18 Q. Okay. When you heard back, was it via a
19 telephone call, in person, an email?

20 A. I don't remember.

13:02

21 Q. Okay. Do you know how long, between the
22 time you got the email -- you sent the email to
23 her, it took for her to respond?

24 A. I don't remember.

25 MS. McFADDEN: Okay. All right. Well,

13:02

FREMONT ORTHOPAEDIC MEDICAL GROUP

DR. MEL D. MORGAN, M.D.
DR. T. DEARBORN, M.D.
DR. M. BELL, M.D.

**38690 Stivers Street, Suite A
Fremont, CA 94536
(510) 793-6655 phone
(510) 793-4318 fax**

RAAD A. AL-SHAikh, M.D.
KEITH A. JEFFREY, PA-C
GREG J. GRANATO, PA-C

NAME Megan Kelly DATE: 1-20-06

IS UNABLE TO RETURN TO WORK/PARTICIPATE IN P.E. FROM _____ TO _____

MAY RETURN TO WORK/P.E. ON _____

MAY RETURN TO WORK/P.E. WITH RESTRICTION NOTED BELOW ON 2-1-06

RECEIVED TREATMENT IN OUR OFFICE ON _____ AT _____

HAS A FOLLOW-UP APPOINTMENT ON _____

RESTRICTIONS/REMARKS: Return to work 3 days/week working
hrs/day. Should be able to sit down every hour
or 10 minutes. No lifting over 20 lbs.

OUR OFFICE WILL NOT FAX WORK/SCHOOL NOTES. IT IS THE PATIENT'S RESPONSIBILITY TO SUBMIT
THEM TO THE EMPLOYER/SCHOOL.

[Signature] Kelly C294 M.D.



EXHIBIT 6

EXHIBIT 7

EXHIBIT 8

EXHIBIT F

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 ---000---

5 MEGAN KELLY,
6 Plaintiff,

COPY

7 vs.

No. C-07-3002 MMC

8 APPLERA CORPORATION and
9 DOES 1-20, inclusive,

10 Defendants.
11 _____/

12
13 DEPOSITION OF GEORGE STEFAN LAZAR

14 VOLUME I

15 (Pages 1 to 249)

16
17
18 Taken before ERIN F. FERREYRA

19 CSR No. 12199

20 February 13, 2008



One Kaiser Plaza, Suite 505
Oakland, California 94612
510/451-1580 Fax 510/451-3797

Certified Shorthand Reporters

1 And before we go any further, I need a 05:54:48
2 break. 05:54:50

3 MS. McFADDEN: Sure. 05:54:51

4 (Recess taken 4:30 to 4:37.) 05:54:51

5 BY MS. McFADDEN: 05:54:51

6 Q. So how did you first find out that 06:03:26
7 Ms. Kelly had new work restrictions and was 06:03:31
8 seeking accommodation that would allow her to 06:03:36
9 return to work? 06:03:38

10 MR. PAETKAU: Objection. Assumes facts 06:03:42
11 not in evidence. Lacks foundation. 06:03:44

12 THE WITNESS: I believe it was her call to 06:03:45
13 HR direct stating what the restrictions were. 06:03:51

14 BY MS. McFADDEN: 06:03:51

15 Q. Do you know when that call was? 06:04:00

16 A. The specific date, no. But it would be 06:04:04
17 the latter part of January, not the end. But 06:04:06
18 sometime from 18th, 19th, 20th forward and later. 06:04:10

19 Q. And what exactly were you told? 06:04:16

20 A. What I was told is what was in the ticket 06:04:21
21 saying that -- what was in the ticket. 06:04:26

22 Q. When you say "ticket," what's a ticket? 06:04:34

23 A. HR direct opens what they call an 06:04:36
24 electronic ticket for every call that they get, 06:04:39
25 who it comes from, information, so it can go back 06:04:43

1 and be looked at later if there's any questions 06:04:50
2 about it. 06:04:52

3 Q. When you say "electronic," are paper 06:04:53
4 copies printed out and also maintained somewhere 06:04:55
5 of the tickets? 06:04:58

6 A. Automatically, no. But they are still 06:04:59
7 saved electronically. 06:05:01

8 Q. So does somebody present you a copy of the 06:05:07
9 ticket or how did you literally find out -- 06:05:09

10 A. It gets sent to me electronically. 06:05:12

11 Q. So you received an electronic copy of the 06:05:15
12 ticket? 06:05:18

13 A. Uh-huh. 06:05:18

14 Q. Have you saved that? 06:05:19

15 A. Yes, we have it. 06:05:20

16 Q. Where is it right now? 06:05:21

17 A. I believe there's a copy in her file, and 06:05:24
18 there is still a copy electronically. 06:05:27

19 Q. And when you say "file," is this the leave 06:05:30
20 of absence file we discussed earlier? 06:05:32

21 A. Yes. 06:05:34

22 Q. Is it anywhere else? 06:05:35

23 A. I am not sure. 06:05:46

24 Q. And is there any requirement of resolving 06:05:49
25 tickets in a particular amount of time? 06:05:52

221

1 Q. For the record, we're marking as Exhibit 2 06:51:59
2 a document that does not have a Bates stamp number 06:52:04
3 on it, but it has a number of tabs. The top tab 06:52:07
4 says "description," and the first line says 06:52:11
5 "reopen" with a check box that says "yes," and it 06:52:13
6 says "reference inquiry ID." 06:52:18

7 So if you'll take a moment and look this 06:
8 over, please. 06:

9 A. I know which one this is. 06:

10 Q. So is this a ticket you were referencing 06:
11 earlier, what we've marked as Exhibit 2? 06:

12 A. Yes. 06:

13 Q. And -- 06:53:00

14 MR. PAETKAU: Just so I'm clear, there's 06:53:05
15 not a Bates number on this? 06:53:07

16 BY MS. McFADDEN: 06:53:07

17 Q. No, I guess not. 06:53:10

18 MR. PAETKAU: But is it a copy of what was 06:53:11
19 produced to us? 06:53:13

20 MS. McFADDEN: I believe so. 06:53:16

21 BY MS. McFADDEN: 06:53:16

22 Q. When is the first time that you saw this 06:53:26
23 ticket? 06:53:27

24 A. Without the dates on here, it's impossible 06:53:28
25 for me to tell. The pages are missing. They're 06:53:33

1 MS. McFADDEN: If you would just read the 06:56:55
2 very last thing. 06:56:57

3 (Record read.) 06:56:58

4 BY MS. McFADDEN: 06:56:58

5 Q. So can you tell me, who generated this 06:57:36
6 ticket? Under description where it has that 06:57:39
7 paragraph, who wrote that description? 06:57:42

8 A. Because the person didn't initial, which 06:57:54
9 they sometimes do, they sometimes do not, because 06:57:59
10 they didn't initial it, I can't tell. The audit 06:58:02
11 trail would have shown who did it. 06:58:06

12 Q. But it's someone in the call taker center? 06:58:15

13 A. In HR direct, yes. 06:58:18

14 Q. Because they are the ones who field these 06:58:21
15 kind of calls and who would create these tickets, 06:58:22
16 correct? 06:58:25

17 A. Yes. 06:58:25

18 Q. So then let's look under "resolution." 06:58:26
19 First of all, do you recognize this to be 06:58:38
20 accurate? Is this the ticket we've been referring 06:58:40
21 to? 06:58:42

22 A. Yes, it is. 06:58:43

23 Q. And let's look under "resolution" where it 06:58:44
24 says "Jamil, can you give her a call? She has 06:58:47
25 left messages for her manager to call, to no 06:58:51

Description

Reopen?: ☐ Yes Reference Inquiry ID:

Case Type: Leave of Absence (LOA)

Case Subtype: Leave of Absence

Case Item: Return from Leave

Summary: Policy Overview

Description: Dr. is allowing her to come back on a modified schedule. 3x a week 4/hrs a day totalling 12hrs a week. Other modifications are not to lift over 20 pounds must sit for at least 10 minutes per hour and possible other restrictions as well.

Is released to come back as of February 1. Has not been able to reach her manager. Best way to reach her is 510-845-7636.

Resolution: Jamil, can you give her a call - she has left messages for her manager to no avail. Thanks - LC

Stefan- per our discussion, please referr to this Inquiry. Thanks. J.S

Notified employee that we could not meet the necessary accomodations. Stefan 1/30/06

Attachment(s): 

Assignment

Assigned To: Stefan Lazar

Phone: (650) 554-3331

Progress

Priority: ☐ Medium

Resolve By Date: 01/31/2006

Resolve By Time: 01:53 PM

Time Open: 7 Days 5 Hours 43 Minutes

Total Time Spent:

Closed On: 01/31/2006

Audit Trail



EXHIBIT G

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 ---000---

5 MEGAN KELLY,
6 Plaintiff,

COPY

7 vs. -

No. C-07-3002 MMC

8 APPLERA CORPORATION and
9 DOES 1-20, inclusive,

10 Defendants.
11 _____/

12
13 DEPOSITION OF GEORGE STEFAN LAZAR

14 VOLUME I

15 (Pages 1 to 249)

16
17
18 Taken before ERIN F. FERREYRA

19 CSR No. 12199

20 February 13, 2008



One Kaiser Plaza, Suite 505
Oakland, California 94612
510/451-1580 Fax 510/451-3797

Certified Shorthand Reporters

1 Q. My apologies. Please continue on. 06:15:03

2 A. Yes. 06:15:05

3 Q. So please continue on. I want to know 06:15:06
4 everything that you did in response to getting the 06:15:08
5 ticket in January 2006. 06:15:12

6 A. The conversation -- I had the conversation 06:15:24
7 with Jonathan Laosiri. I don't remember at that 06:15:28
8 point as to whether he was aware of the 06:15:36
9 restrictions or what they would be. However, if 06:15:38
10 he did not know, I would have informed him. And 06:15:43
11 that he would need to review whether he could make 06:15:49
12 that kind of accommodation or not. 06:15:52

13 To the best of my recollection, he asked 06:15:59
14 for my guidance because of the minimal number of 06:16:13
15 hours she could work, and I told him that the 06:16:21
16 general guideline would be a minimum of 20 hours 06:16:32
17 just as a starting point in that most employees at 06:16:45
18 20 hours or more, we should be able to accommodate 06:16:52
19 with exceptions. 06:17:00

20 And with employees who worked less than 20 06:17:04
21 hours, it was more difficult to do, but that he 06:17:07
22 would have to make the judgment based upon what 06:17:17
23 work he had and what work she could do. He had to 06:17:20
24 make the best business judgment. We also had the 06:17:26
25 discussion of our concern about her safety and the 06:17:30

1 safety of other employees in the area. 06:17:37

2 Because of the restrictions, there was a 06:17:50
3 question about her stability. And as we know now 06:17:54
4 from later documents, she still needed surgery, 06:18:03
5 which she had not had. And there was a concern 06:18:06
6 both for her safety and of safety of the 06:18:10
7 individuals around, time issue aside. 06:18:15

8 Q. So have you now told me everything that 06:18:26
9 you recall doing in response to getting the 06:18:28
10 ticket? 06:18:30

11 A. Yes. 06:18:30

12 Q. How many conversations total did you have 06:18:32
13 with Jonathan Laosiri in January 2006 with respect 06:18:33
14 to the issue of getting Ms. Kelly back to work? 06:18:38

15 A. At least two, but it could have been more. 06:18:44

16 Q. This morning you gave some testimony about 06:18:50
17 a conversation with Mr. Laosiri. Was that the 06:18:52
18 first conversation you had with him? 06:18:55

19 A. Yes, I believe that's what I said this 06:18:57
20 morning. 06:19:01

21 Q. And when did you have another conversation 06:19:03
22 with him? 06:19:05

23 A. The later conversation would have been 06:19:05
24 when he -- when a decision was made that he could 06:19:07
25 not make the accommodation. He could not make -- 06:19:12

1 MR. PAETKAU: Objection. Misstates prior 06:25:22
2 testimony. The testimony speaks for itself. It's 06:25:23
3 in the record. 06:25:27

4 BY MS. McFADDEN: 06:25:27

5 Q. Why did you tell Mr. Laosiri he had to 06:25:28
6 make a business judgment? 06:25:30

7 MR. PAETKAU: Objection. That question 06:25:31
8 assumes facts not in evidence and misstates prior 06:25:32
9 testimony. Argumentative. 06:25:35

10 THE WITNESS: Mr. Laosiri is the business. 06:25:42
11 It is his responsibility to make a judgment in his 06:25:47
12 organization whether he can accommodate an 06:25:52
13 employee. It is not my responsibility nor do I 06:25:56
14 have the authority. I can only advise and 06:26:01
15 recommend. 06:26:07

16 BY MS. McFADDEN: 06:26:07

17 Q. And do you think it's important that your 06:26:24
18 input be considered in terms of the ultimate 06:26:32
19 judgment about what's going to be done in terms of 06:26:36
20 accommodating an employee's disability? 06:26:38

21 A. Absolutely, yes. 06:26:41

22 Q. Just to make sure that I've got your 06:26:53
23 testimony straight, who had the final call, in 06:26:55
24 your opinion, as to whether or not Ms. Kelly's 06:27:02
25 January 2006 work restrictions would be 06:27:05

1 accommodated?

06:27:07

2 A. Mr. Laosiri.

06:27:10

3 Q. And is that in writing somewhere that when
4 an employee is requesting accommodation for a
5 disability; it's the supervisor rather than HR
6 that makes the final call?

06:27:19
06:27:25
06:27:28
06:27:32

7 MR. PAETKAU: Objection. That question
8 assumes a fact in evidence that Ms. Kelly had a
9 disability.

06:27:34

06:27:35

06:27:39

10 You can answer.

06:27:41

11 THE WITNESS: I don't know that it's
12 specifically in writing, but it is the model that
13 we use.

06:27:46

06:27:47

06:27:50

14 BY MS. McFADDEN:

06:27:50

15 Q. You also testified that in your
16 conversation with Mr. Laosiri, the safety of
17 plaintiff and other employees was discussed. Was
18 this in the first conversation you had with him?

06:27:54

06:28:01

06:28:04

06:28:06

19 A. I believe it was.

06:28:08

20 Q. What specifically do you remember
21 discussing in terms of the safety of plaintiff and
22 others?

06:28:11

06:28:13

06:28:15

23 A. There was -- we expressed -- he expressed
24 specific -- he expressed concerns about her safety
25 and falling, given the materials that had to be

06:28:16

06:28:31

06:28:36

EXHIBIT H

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 ---000---

5 MEGAN KELLY,

6 Plaintiff,

7 vs.

No. C-07-3002 MML

8 APPLERA CORPORATION,

(EMC)

9 Defendants.
10 _____/

11
12
13
14 DEPOSITION OF JONATHAN LAOSIRI

15
16
17
18
19 Taken before CAROL SCHILP

20 CSR No. 9648

21 April 8, 2008
22
23



One Kaiser Plaza, Suite 505
Oakland, California 94612
510/451-1580 Fax 510/451-3797

Certified Shorthand Reporters

1 A. I don't remember.

2 Q. Did you receive any training about sexual
3 harassment at any other companies you've worked for
4 since university?

5 A. Yes.

10:25

6 Q. What's the last sexual harassment training
7 you've had?

8 A. At Affymetrix.

9 Q. Do you have an understanding of what the
10 term reasonable accommodation means?

10:25

11 A. Yes.

12 Q. What's your understanding of what that
13 term means?

14 A. Well --

15 MR. PAETKAU: Objection to the extent it
16 calls for a legal conclusion.

10:25

17 You can answer if you understand.

18 THE WITNESS: A reasonable accommodation
19 is, if I have a job that I could provide to someone
20 that -- you know, that could be comfortable at a
21 job, then I could -- then I will, you know, find a
22 job for them. If they can't stand for too long, I
23 would make accommodation that they could sit down
24 maybe five minute or ten minute, whatever is
25 required.

10:26

10:26

1 BY MS. McFADDEN:

2 Q. And you've just given me your
3 understanding of what the term reasonable
4 accommodation means.

5 Where did you get that understanding from, 10:26
6 that that's what it means?

7 A. Just from my experience.

8 Q. Do you have an understanding of what the
9 term interactive process means?

10 A. No. 10:26

11 Q. Have you ever heard the term interactive
12 process before?

13 A. No.

14 Q. Do you have an understanding of what the
15 phrase essential functions of a job means? 10:27

16 MR. PAETKAU: Objection. Vague and
17 ambiguous; lacks foundation; and to the extent it
18 calls for a legal conclusion.

19 You can answer if you understand it.

20 THE WITNESS: Can you rephrase that? 10:27

21 BY MS. McFADDEN:

22 Q. Have you ever heard the term essential
23 functions of a job?

24 A. Yes.

25 Q. Okay. Do you have an understanding of 10:27

EXHIBIT I

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

---000---

MEGAN KELLY,

Plaintiff,

vs.

No. C-07-3002 MML

APPLERA CORPORATION,

(EMC)

Defendants.

COPY

DEPOSITION OF JONATHAN LAOSIRI

Taken before CAROL SCHILP

CSR No. 9648

April 8, 2008



One Kaiser Plaza, Suite 505
Oakland, California 94612
510/451-1580 Fax 510/451-3797

Certified Shorthand Reporters

1 what that means?

2 A. Yes.

3 Q. What's your understanding?

4 A. It's what is required to do a job.

5 Q. And where did you get your understanding 10:27
6 that that's what essential functions means?

7 A. From experience.

8 Q. Do you have an understanding of the
9 process -- strike that.

10 I want to focus on the time period of 10:27
11 January 2006. So while you were production
12 manager, that time frame.

13 During that time frame, do you have an
14 understanding of what process Applera Corporation
15 used to determine reasonable accommodations for 10:28
16 employees with disabilities?

17 MR. PAETKAU: I want to object to that as
18 lacking foundation; also to the extent it calls for
19 legal conclusions.

20 You can answer it if you understand. 10:28

21 THE WITNESS: Could you question that --
22 say the question again?

23 BY MS. McFADDEN:

24 Q. Sure. Let me try to ask that again.

25 During the last six months while you were 10:28

1 with Applera, just focusing on that time frame, do
2 you know how it is the company determined
3 reasonable accommodations for employees with
4 disabilities?

5 MR. PAETKAU: Again, objection. Lacks 10:28
6 foundation; incomplete hypothetical; and to the
7 extent it calls for a legal conclusion; and vague
8 and ambiguous.

9 You can answer.

10 BY MS. McFADDEN: 10:29

11 Q. I'm asking for your understanding.

12 A. Yes.

13 Q. Okay. Well, what's the process the
14 company uses?

15 MR. PAETKAU: Or used at that time? 10:29

16 MS. McFADDEN: Yes.

17 BY MS. McFADDEN:

18 Q. Focusing on that time frame, the last six
19 months, what process did Applera use to determine
20 reasonable accommodations for employees with 10:29
21 disabilities?

22 A. I usually handled through company safety
23 officers and the company doctor.

24 MS. McFADDEN: Could you -- I'm sorry.
25 It's a little bit noisy. Could you just repeat his 10:29

29

1 complete answer?

2 (Record was read.)

3 BY MS. McFADDEN:

4 Q. Okay. And so let me reask it, because I'm
5 not sure you understood the question.

10:29

6 I'm not asking about you specifically.
7 We'll get into you and what you did. But right now
8 I'm asking about the company as a whole. And if
9 you don't know, you don't know.

10 But do you know, at Applera Corporation,
11 is there a process --

10:30

12 A. I don't know.

13 Q. Let me just finish the question before you
14 answer --

15 A. Okay.

10:30

16 Q. -- just so that we've got a complete
17 record.

18 In terms of Applera Corporation as a
19 whole, do you know whether the company has a
20 process that it used to determine accommodations
21 for employees with disabilities?

10:30

22 MR. PAETKAU: Objection. Incomplete
23 hypothetical; lacks foundation; vague and
24 ambiguous; asked and answered; and to the extent it
25 calls for legal conclusions.

10:30

1 You can answer.

2 THE WITNESS: I don't know.

3 BY MS. McFADDEN:

4 Q. Okay. Okay. And then you previously gave
5 an answer that you usually handle through company 10:30
6 safety officers or company doctors.

7 What is a company safety officer?

8 MR. PAETKAU: Objection. The question
9 misstates prior testimony.

10 You can answer. 10:30

11 THE WITNESS: I don't -- I mean, I don't
12 know her job function, what she does every day.
13 But anything regarding the safety of the people, of
14 the employee, I normally refer to her.

15 BY MS. McFADDEN: 10:31

16 Q. Okay. So was there just one company
17 safety officer at Applera during your last six
18 months?

19 A. I don't know.

20 Q. Okay. Who was the company safety officer 10:31
21 who was there during the last six months?

22 A. Merte Miles.

23 Q. Could you spell that for us?

24 A. M-i-l-e-s, M-e-r-t-e, I think.

25 Q. What was Merte Miles' function with 10:31